

**2017**

# **Legal framework workbook**

*France*

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## 2017 National report (2016 data) to the EMCDDA by the French Reitox National Focal Point

**Supervision:** Christophe Palle

### **Contribution to the workbooks**

- 1.1 *Drug Policy:* Cristina Díaz-Gómez
- 1.2 *Legal Framework:* Caroline Protais, Cristina Díaz-Gómez
- 2 *Drugs:* Olivier Le Nézet, Agnès Cadet-Taïrou, Magali Martinez, Eric Janssen
- 3.1 *Prevention:* Carine Mutatayi, Caroline Protais
- 3.2 *Treatment:* Christophe Palle, Anne-Claire Brisacier, Caroline Protais
- 3.3 *Best Practice:* Carine Mutatayi
- 3.4 *Harms and Harm Reduction:* Anne-Claire Brisacier, Cristina Díaz-Gómez, Maitena Milhet, Thomas Néfau
- 4 *Drug Market and Crime:* Michel Gandilhon, Magali Martinez, Thomas Néfau, Caroline Protais, Cristina Díaz-Gómez
- 5.1 *Prison:* Caroline Protais
- 5.2 *Research:* Isabelle Michot, Maitena Milhet

**Proofreading (French version):** Julie-Émilie Adès, Ivana Obradovic (OFDT); Nicolas Prisse, president of the Interministerial Mission for Combating Drugs and Addictive Behaviours, and the project managers of the MILDECA

**Proofreading (English version):** Julien Morel d'Arleux, Anne de l'Eprevier

**Bibliographic references:** Isabelle Michot

**Legal references:** Anne de l'Eprevier

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## T0. Summary

Please provide an abstract of this workbook (target: 500 words) under the following headings:

- Summary of T.1.1.1 on the characteristics of drug legislation and national guidelines for implementation within your country (are offences criminal; what is the range of possible penalties; are there alternatives to punishment)?
- Summary T1.1.2: on how do the penalties vary by drug / quantity / addiction / recidivism?
- Summary T1.1.3: are there distinct laws for controlling NPS?

In France, the illegal use of any substance or plant classified as a narcotic is an offence punishable by sentences of up to one year in prison and a fine of €3,750 (Article L.3421-1 of the French Public Health Code - CSP). The sentences incurred may be up to five years in prison and a fine of €75,000 when the offence is committed by a public authority, a person responsible for public services or personnel in a company carrying out duties calling into question transport safety. Persons prosecuted for these offences also face additional penalties such as a compulsory awareness course on the dangers of drug and alcohol use, in accordance with the provisions set forth in Article 131-35-1 of the French Penal Code.

Aside from the sentences issued by the courts in compliance with Article L.3421-1 of the CSP, an awareness course may also be proposed by the public prosecutors as an alternative to prosecution or simplified procedure (fixed penalty notice, criminal order). In this context, this measure is particularly intended for occasional narcotics users who do not appear to present health or social integration problems. The course applies to all individuals aged over 13 years. When circumstances show that the respondent requires health care, the legal authorities may require them to undergo court-ordered treatment (Article L.3413-1 of the CSP). Public action is not taken once it has been established that the individual has undergone court-ordered treatment, following the events of which s/he was accused (Article L.3423-1 of the CSP).

Illegal transport, possession, proposal, sale, acquisition or use and the fact of facilitating the illegal use of narcotics are punishable by a maximum of ten years in prison and a fine of €7.5 million (Article L.222-37 of the French Penal Code). The illegal proposal or sale of narcotics to a person with a view to personal use is punishable by five years in prison and a fine of €75,000; however, the prison sentence is extended to ten years when narcotics are proposed or sold to minors, in learning or educational establishments or on government premises, and at or very close to the time when students or the public are entering or leaving these establishments premises, in the vicinity of these establishments or premises (Article L.222-39 of the French Penal Code). The maximum penalties incurred for trafficking are life imprisonment and a fine of €7.5 million (Article L.222-34 of the French Penal Code). The law itself does not distinguish between possession for personal use or for trafficking, nor by type of illegal substance.

There are no specific laws regulating new psychoactive substances (NPS). The rationale for classifying a NPS on the list of narcotics is both individual (each prohibited substance is named on the list) and generic: it "starts with a basic molecular structure (not necessarily psychoactive) and stipulates the variants affected by the ban" (Martinez 2013).

## T1. National profile

### T1.1 Legal framework

The purpose of this section is to

- Summarise the basic penalties and other responses to the offences of use, possession for personal use, supply (including production) of illicit drugs.

Please structure your answers around the following questions.

T1.1.1 Please describe the characteristics of drug legislation and national guidelines for implementation within your country (are offences criminal; what is the range of possible penalties; are there alternatives to punishment)?

In France, the illegal use of any substance or plant classified as a narcotic is an offence punishable by sentences of up to one year in prison and a fine of €3,750 (Article L.3421-1 of the French Public Health Code - CSP). The sentences incurred may be up to five years in prison and a fine of €75,000 when the offence is committed by a public authority, a person responsible for public services or personnel in a company carrying out duties calling into question transport safety. Persons prosecuted for these offences also face additional penalties such as a compulsory awareness course on the dangers of drug and alcohol use, in accordance with the provisions set forth in Article 131-35-1 of the French Penal Code.

Aside from the sentences issued by the courts in compliance with Article L.3421-1 of the CSP, an awareness course may also be proposed by the public prosecutors as an alternative to prosecution or simplified procedure (fixed penalty notice, criminal order). In this context, this measure is particularly intended for occasional narcotics users who do not appear to present health or social integration problems. The course applies to all individuals aged over 13 years. When circumstances show that the respondent requires health care, the legal authorities may require them to undergo court-ordered treatment (Article L.3413-1 of the CSP). Public action is not taken once it has been established that the individual has undergone court-ordered treatment, following the events of which s/he was accused (Article L.3423-1 of the CSP).

In 2012 a directive establishing a criminal policy strategy for drug crimes reiterated that, when sentencing, courts should take account of factors suggesting a simple use or drug addiction, the principle of proportionality with respect to the seriousness of the alleged offence, calls for systematic penal responses and increasingly effective judicial measures [[Circulaire CRIM 2012-6/G4 du 16 février 2012 relative à l'amélioration du traitement judiciaire de l'usage de stupéfiants](#)]. Hence, the legal authorities are invited to pass the measure relating to awareness courses for simple first use and to systematically envisage court-ordered treatment measures when circumstances reveal drug addiction and a need for treatment. With regard to minors, the response by the legal authorities should remain predominantly educational and health-based.

Illegal transport, possession, proposal, sale, acquisition or use and the fact of facilitating the illegal use of narcotics are punishable by a maximum of ten years in prison and a fine of €7.5 million (Article L.222-37 of the French Penal Code). The illegal proposal or sale of narcotics to a person with a view to personal use is punishable by five years in prison and a fine of €75,000; however, the prison sentence is extended to ten years when narcotics are proposed or sold to minors, in learning or educational establishments or on government premises, and at or very close to the time when students or the public are entering or leaving these establishments premises, in the vicinity of these establishments or premises (Article L.222-39 of the French Penal Code).

The maximum penalties incurred for leaders of criminal narcotic trafficking groups are increased in view of the scale of the penalties. Hence, the fact of leading or organising a

group which aims to illegally produce, manufacture, import, export, transport, hold, propose, sell, purchase or use narcotics is punishable by life imprisonment and a fine of €7.5 million (Article L.222-34 of the French Penal Code).

Furthermore, Article L.321-6 of the French Penal Code makes it possible to implicate “the fact of not being able to justify resources corresponding to one's lifestyle or not being able to justify the origin of goods in one's possession, while normally associating with one or more persons [having committed a crime or offence punishable by at least five years in prison” (which includes narcotic trafficking).

In addition, money laundering operations relating to narcotic trafficking are punishable by a sentence of ten years in prison and a fine of €750,000 (Article L.222-38 of the French Penal Code).

#### T1.1.2 How do the penalties vary by drug / quantity / addiction/recidivism?

The law itself does not distinguish between possession for personal use or for trafficking, nor by type of illegal substance. However, it differentiates between the illegal sale and supply of narcotics to an individual for personal use and other situations. In practice, the prosecutors and courts take into account the quantity in their possession and the circumstances of the offence when defining the events in criminal terms. According to Article 132-10 of the penal code, sentences may be doubled in the event of a subsequent offence within 5 years, although this does not specifically concern DLO.

#### T1.1.3 What, if any, legislation within your country is designed to control New Psychoactive Substances (NPS)?

There are no specific laws regulating new psychoactive substances (NPS). The legal framework relating to narcotics applies to NPS, as soon as they are included on the list of substances classified as narcotics. The rationale for classifying a NPS on this list is both individual (each substance is named) and generic: it "starts with a basic molecular structure (not necessarily psychoactive) and stipulates the variants affected by the ban" (Martinez 2013). The decision is taken by the Ministry of Health further to the proposal by the French National Agency for Medicines and Health Products Safety (ANSM).

*T1.1.4 **Optional.** If available provide information in a separate paragraph on other topics relevant to the understanding of the legal framework for responding to drugs in your country, such as: drug driving, workplace regulations, drug testing, precursor control, organised crime legislation relevant to drug trafficking, issues focused on minors. Regulatory aspects of treatment and harm reduction are also of interest.*

The law of 3 February 2003 introduced a new offence punishing any vehicle driver whose blood test revealed the presence of narcotics [[Loi n°2003-87 relative à la conduite sous l'influence de substances ou plantes classées comme stupéfiants](#)]. Offenders can be imprisoned for up to two years and be fined up to €4,500. These sentences can be increased to three years' imprisonment and a fine of €9,000 (as well as a three-year driving licence suspension) if alcohol is consumed in conjunction with the use of illegal substances. Driving after using narcotics constitutes aggravating circumstances in the event of bodily harm or a fatal accident: the penalties can run up to a €100,000 fine and seven years' imprisonment (in the event of involuntary manslaughter). These sanctions are harsher for public transport personnel.

The law also steps up the penal sanctions applicable to employees in a position of public authority (or those carrying out a public service activity or involved in national defence) who commit drug use offences. They risk a five-year prison sentence and a total fine of up to €75,000. Public transport company employees committing drug use offences while on duty are also subject to these penalties, in addition to further sanctions prohibiting them from carrying out their professional activities in the future and (where applicable) requiring them to undergo, at their own expense, an awareness-building training course on the dangers of drug and alcohol use.

For an overview of harm reduction measures in France refer to the "Harm reduction" workbook.

## T1.2 Implementation of the law

The purpose of this section is to

- Summarise any available data on the implementation of legislation.
- Provide any additional contextual information that is helpful to understand how legislation is implemented in your country.

Please structure your answers around the following questions.

T.1.2.1 Is data available on actual sentencing practice related to drug legislation?

Please provide a summary and a link to the original information or state if no information is available.

In 2015, convictions for drug law offences (DLO) accounted for 11% of all convictions in criminal records, i.e. around over 64,000. Some 60% of these convictions were illegal use offences, followed by possession-acquisition offences (around 20%) and trade/transport offences (approximately 10%). Prison sentences, some partially suspended, concern nearly a third of convictions for DLO. There were 8,200 fixed penalty notices handed down for DLO.

T.1.2.2 Is data available on actual sentencing practice related to legislation designed to control NPS?

Please provide a summary and a link to the original information or state if no information is available.

Actual court practices on the penal response to NPS cannot be documented at present. They may have recourse to the article on inciting use, but no detailed statistics according to type of substances are available. Furthermore, when suspect goods are detected by the services, particularly Customs, in order to remove it from the market, the substance may be assimilated to a "medication by function". The public prosecutor may decide to initiate an investigation and, if appropriate, to prosecute the offenders in court.

*T1.2.3 Optional. If possible, discuss why implementation might differ from the text of laws (e.g. political instructions, resource levels, policy priorities).*

## T2. Trends

The purpose of this section is to

- provide a commentary on the context and possible explanations of trends in legislation and the implementation of the legislation within your country.

Please structure your answers around the following questions.

T2.1 Please comment on any changes in penalties and definitions of core offences (offences of use, possession for personal use, supply (including production) of illicit drugs) in the legal framework since 2000.

If possible discuss the possible reasons for change (e.g. political philosophy, changes in the drug situation, public debate, policy evaluation).

The framework of the French policy for combating illicit drugs is set forth in the 1970 French law on narcotics [[Loi n°70-1320 relative aux mesures sanitaires de lutte contre la toxicomanie et à la répression du trafic et de l'usage illicite des substances vénéneuses](#)]. However the orientations of the penal policy for combating drug use and traffic are regularly redefined, leading to the creation of a systematic penal response to the use of narcotics (see T1.1.1).

The law of 9 March 2004 [[Loi n°2004-204 portant adaptation de la justice aux évolutions de la criminalité](#)] allows to reduce by half sentences handed down to offenders in particular for offences ranging from drug dealing to all forms of trafficking (production, import-export, traffic) if, "by having informed the administrative or legal authorities, the offender has made it possible to put an end to the offence and possibly identify other guilty parties". This possibility for "penitents" to get a reduced sentence for trafficking is a new feature in the French penal process.

The "delinquency prevention law" of 5 March 2007 [[Loi n°2007-297 relative à la prévention de la délinquance](#)] provided for a wider range of law enforcement measures that could be taken against drug users. It introduced a new penalty: a mandatory awareness course on the dangers of drug and alcohol use (€450 maximum, the amount of a third class contravention). Its aim is to make offenders fully aware of the danger and harm generated by the use of narcotic substances, as well as the social impact of such behaviour. The drug awareness course may be proposed by the authorities as an alternative to prosecution and to fixed penalty notice. An obligation to complete the drug awareness course may also be included in the criminal ruling as an additional sentence. It applies to all individuals over the age of 13.

This 5 March 2007 law expands the scope of court-ordered drug treatment measures, which now can be ordered at any stage of criminal proceedings: originally conceived as an alternative to prosecution (resulting in a suspension of the legal process), court-ordered treatments can now be ordered as a sentence enforcement measure. The application directive issued by the Ministry of Justice on 16 February 2012 [[Circulaire CRIM 2012-6/G4 relative à l'amélioration du traitement judiciaire de l'usage de stupéfiants](#)] invites the legal authorities to systematically envisage a drug treatment order when circumstances reveal that the suspect needs treatment. The "delinquency prevention law" also provides for more severe penalties in the event of "directly inciting a minor to transport, possess, propose or sell narcotics" (up to 10 years imprisonment and a fine of €300,000).

Lastly, the law of 9 July 2010 (the so-called "Warsmann law") established a new penal procedure enabling assets of individuals undergoing prosecution to be seized to ensure that they are confiscated if the suspects were eventually found guilty [[Loi n°2010-768 visant à faciliter la saisie et la confiscation en matière pénale](#)]. The scope of this law is broader than drug law offences, but applies to these offences in particular.



T2.2 Please comment on how the implementation of the law has changed since 2000. If possible discuss the possible reasons for change (e.g. new guidelines, availability of alternatives to punishment)

In the past 17 years, the number of arrests for simple use has more than doubled, increasing from around 77,000 to more than 160,000 persons taken to court. In 2010, (since 2010 national statistics no longer provide details of arrests for each substance), 90% concerned simple cannabis use, 5% heroin use and 3% cocaine use.

In response to this rapid increase in arrests, alternatives to prosecutions (drug warning, referral to a health and social centre, drug treatment order, etc.) have been systematically applied (see T2.1). Although infrequent at the end of the 1990s, they now represent more than 70% of referrals ordered by prosecutors as disciplinary action against narcotics use. Furthermore, the penal response to these cases of use is characterised by the increasingly frequent recourse to court convictions during the 2000s. Although the number of annual convictions remained below 5,000 in the 1990s, these increased almost nine-fold between 2000 and 2015 (more than 29,000 convictions for a single drug use offence). Among all drug law offences the proportion of convictions for drug use only, to the exclusion of any other offences, reaches today more than 45%: this was three times lower in 2000 (15%).

As regards trafficking, the number of arrests increased 1.2-fold since 2000 (about 13,500 persons taken to court nowadays). Import-export trafficking offences give rise to sentences increasingly involving prison sentences: the proportion of prison sentences or partially suspended sentences increased from 65% in 2000 to 86%. However, the proportion of prison sentences or partial suspended sentences ordered for the supply and sale of narcotics as the main offence has decreased (47% in 2000, a bit more than a third less 15 years later) in favour of totally suspended sentences (increasing from 38% to 41% over the same period) and alternative sentences or educational penalties (18% nowadays).

### T3. New developments

The purpose of this section is to provide information on any notable or topical developments observed in legislation, the implementation of legislation, evaluation, and the political position on drug legislations **since your last report**.

T1 is used to establish the baseline of the topic in your country. Please focus on any new developments here.

If information on recent notable developments have been included as part of the baseline information for your country, please make reference to that section here. It is not necessary to repeat the information.

Please structure your answers around the following questions.

T3.1 What, if any, laws have changed in the last year?

Please use the following table to structure your answer, providing the title of the law, a hyperlink if available and a short summary of the change and explanatory comments.



Several orders and decrees were promulgated in the extension of the health law of 26 January 2016:

- The decree of 10 May 2017 [[Décret n° 2017-1003 relatif à la délivrance de médicaments dans les centres d'accueil et d'accompagnement à la réduction des risques en direction des usagers de drogues](#)] and the order of 5 May 2017 [[Arrêté fixant la liste des médicaments pouvant être dispensés dans les centres d'accueil et d'accompagnement à la réduction des risques et des dommages pour usagers de drogues](#)] authorise the CAARUDs to distribute naloxone kits to prevent risks of overdose. The dispensation of naloxone kits had previously been limited to hospital pharmacies and hospital CSAPAs. (See "Harm reduction" workbook, part T1.5.3 for a short history of the implementation of the naloxone distribution program in France).
- The orders of 1st August 2016 [[Arrêté fixant les conditions de réalisation des tests rapides d'orientation diagnostique \[TROD\] de l'infection par les virus de l'immunodéficience humaine \(VIH 1 et 2\) et de l'infection par le virus de l'hépatite C \(VHC\) en milieu médico-social ou associatif](#)] and of 18 August 2016 [[Arrêté fixant les conditions particulières de délivrance de l'autotest de détection de l'infection par les virus de l'immunodéficience humaine \(VIH 1 et 2\) et les modalités d'information et d'accompagnement de la personne](#)] lay down the list, the conditions for implementation and dispensing of rapid diagnostic tests for AIDS virus and hepatitis C virus infection. Reiterating the recommendations issued by the HAS, Article 39 of the French law on health system reform of 26 January 2016 extends the practice of Rapid diagnostic tests (RDT) from health professionals only to personnel in community or prevention facilities having received appropriate training. RDTs can thus be performed within CAARUDs and CSAPAs, provided that these facilities received an authorisation from the Regional Health Agency. RDTs can be performed by nurses, midwives, doctors and pharmacists (see "Harm reduction" workbook).
- The decree of 24 August 2016 [[Décret n° 2016-1152 relatif à la lutte contre la conduite après usage de substances ou plantes classées comme stupéfiants](#)] allows for a saliva test to be performed instead of a blood sample to combat driving under the influence of narcotics more efficiently.

T3.2 How was the law implemented in the last year? What, if any, changes have occurred? Please provide sentencing or other outcome data, or provide the link to any relevant reports or information.

In 2015, convictions handed down for drug-related offences represent 11% of all convictions recorded in criminal records, i.e. 64,000 convictions and 8,200 fixed penalty notices, which are recorded in criminal records. These offences are broken down as follows: illegal use (60%), possession, acquisition (22%), commerce-transport (12%), import-export (1.5%), dealing and selling (4%), aiding and abetting (33 cases). Prison sentences without remission, or partial sentence suspension concern nearly 26% of convictions for drug-related offences.

T3.3 Has there been an evaluation of the law in the last year, or other indications as to its effects? Please specify and provide links to the original report.

No recent evaluation of the law in France.

*T3.4 Optional. Summarise any major political discussions in the last year relating to legislation or its implementation that you feel is important in understanding the current legal framework within your country.*

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The regulatory document subjected to amendments / Initial version of the text	The amended regulatory document / Current version of the text		
Title. Hyperlink	Title. Hyperlink	Summary of change	Comments

#### T4. Additional information

The purpose of this section is to provide additional information important to understanding drug legislation in your country that has not been provided elsewhere.

Please structure your answers around the following questions.

*T4.1 **Optional.** Please describe any additional important sources of information, specific studies or data on the legal framework. Where possible, please provide references and/or links.*

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*T4.2 **Optional.** Please describe any other important aspect of the legal framework that has not been covered in the questions above. This may be additional information or new areas of specific importance for your country (e.g. money laundering, tobacco, alcohol legislation, new/changing organisations/structures, regulations related medical or industrial cannabis, and regulatory framework of opioid substitution treatment).*

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#### T5. Sources and methodology.

The purpose of this section is to collect sources and bibliography for the information provided above, including brief descriptions of studies and their methodology where appropriate.

Please structure your answers around the following questions.

T.5.1 Please list notable sources for the information provided above.

Legislative sources used are mainly the Public Health Code and the Penal Code. All information provided herein is based on permanent monitoring of legislation by the OFDT and on the following data:

- *Etat 4001*, Ministry of the Interior (for data on accused individuals)
- National criminal record, Ministry of Justice (for convictions)

Martinez, M. (2013). Contrôler les NPS : du classement comme stupéfiant à l'utilisation d'autres réglementations. Acta (13) 62-66.

T5.2 Where studies or surveys have been used please list them and where appropriate describe the methodology?

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